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12 ** Each Will Comply With LR IA 10-2*
13 *Within 45-days*

14 *Attorneys for Plaintiff,*
15 *Goldman, Sachs & Co.*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 GOLDMAN, SACHS & CO.

19 Plaintiff,

20 vs.

21 CITY OF RENO, NEVADA

22 Defendant.

Case No.: 3:12-cv-00327

COMPLAINT

23
24 Plaintiff Goldman, Sachs & Co. ("Goldman Sachs"), by and through its
25 undersigned attorneys, hereby alleges as follows for its complaint against defendant
26 City of Reno, Nevada ("Reno" or the "City"):

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28 ///

1 against Goldman Sachs, the FINRA Arbitration would be improper because Reno is
2 not a customer of Goldman Sachs for purpose of its ARS, and FINRA therefore has no
3 jurisdiction over the parties' dispute. Accordingly, the Court should declare that the
4 parties' dispute is not arbitrable and enjoin the FINRA Arbitration.

5 **THE PARTIES**

6 4. Plaintiff Goldman Sachs is a limited partnership organized under the
7 laws of the State of New York, with its principal office located in New York, New
8 York. Goldman Sachs has one general partner and one limited partner. Its general
9 partner is The Goldman, Sachs & Co. L.L.C., a limited liability company organized
10 under the laws of the State of Delaware with its principal place of business in New
11 York, and whose sole member is The Goldman Sachs Group, Inc. Goldman Sachs'
12 limited partner is The Goldman Sachs Group, Inc., a corporation organized under the
13 laws of the State of Delaware with its principal place of business in New York.

14 5. Defendant Reno is a municipality located in the state of Nevada. Like
15 many municipalities, Reno has considerable experience and sophistication with
16 financial products and contract negotiation.

17 6. In entering into the contracts governing the relationships between the
18 parties here, Reno was advised by both an independent financial advisor, Nevada
19 State Bank Public Finance ("Nevada Finance"), and independent legal counsel,
20 Swendseid & Stern.

21 **JURISDICTION AND VENUE**

22 7. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201
23 *et seq.* and Federal Rule of Civil Procedure 57, and for injunctive relief pursuant to
24 Federal Rule of Civil Procedure 65(a).

25 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332
26 because the parties are of diverse citizenship and the amount in controversy,
27 exclusive of interest and costs, exceeds \$75,000. Specifically, Reno seeks through the
28 FINRA Arbitration in excess of \$500,000 of damages. (Ex. 1 (Statement of Claim) at

17.)

9. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Goldman Sachs' request for an injunction and declaratory judgment necessarily presents questions of federal law, because Reno's claims in the FINRA Arbitration include claims under Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5 promulgated thereunder.

10. This Court has personal jurisdiction over Reno because the City is located in this District, and because this action arises out of activities undertaken by Reno within this District in connection with its issuance of ARS. In addition, this Court has personal jurisdiction over Reno because Reno contractually consented to its jurisdiction in its broker-dealer agreements with Goldman Sachs. (Exs. 2 and 3 (2005 and 2006 Broker-Dealer Agreements) at 14.)

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(2) because Reno is located in this judicial district and a substantial part of the events giving rise to this action occurred within this judicial district. In addition, venue is proper because Reno contractually consented to the venue of this judicial district in its broker-dealer agreements with Goldman Sachs. (Exs. 2 and 3 (2005 and 2006 Broker-Dealer Agreements) at 14.)

FACTUAL BACKGROUND

The 2005 Bond Issuance

12. On October 12, 2005, Reno elected to issue approximately \$73 million in ARS debt for purposes of funding various City projects. The City chose Goldman Sachs to be the sole underwriter and broker-dealer for those ARS. The 2005 Bonds were issued pursuant to an underwriter agreement between Reno and Goldman Sachs dated October 19, 2005 (the "2005 Underwriter Agreement"). Reno was advised by its independent, experienced financial advisor, Nevada State Bank Public Finance, and represented by its independent, experienced legal counsel, Swendseid &

1 Stern, throughout the negotiation and execution of this agreement. The 2005
2 Underwriter Agreement sets forth Goldman Sachs's limited duties in connection with
3 the underwriting: fundamentally, to purchase Reno's ARS, distribute them to
4 interested investors as *bona fide* securities, and perform other duties relating to the
5 purchase and resale of the 2005 Bonds. (Ex. 4 (2005 Underwriter Agreement) at 1-2.)

6 13. Simultaneously with entering into the 2005 Underwriter Agreement,
7 Goldman Sachs and Reno agreed that Goldman Sachs would also serve as broker-
8 dealer for the 2005 Bonds, and those services were provided pursuant to a contract,
9 dated October 26, 2005 (the "2005 Broker-Dealer Agreement"). Again, Reno was
10 advised by Nevada State Bank Public Finance and represented by Swendseid &
11 Stern throughout the negotiation and execution of this agreement. As with the 2005
12 Underwriter Agreement, the 2005 Broker-Dealer Agreement sets forth Goldman
13 Sachs' limited duties: fundamentally, to work with an auction agent to manage the
14 auctions for the 2005 Bonds, to calculate the rate on the ARS, to communicate the
15 auction results to the auction agent, and to perform other duties in connection with
16 the management and conduct of the auction. (Ex. 2 (2005 Broker-Dealer Agreement)
17 at 3-10.)

18 14. The 2005 Broker-Dealer Agreement contains a specific forum selection
19 clause providing that the parties will bring any disputes arising out of the contract or
20 any transactions contemplated by the contract in Nevada federal district court:

21 **The parties agree that all actions and proceedings arising**
22 **out of this Broker-Dealer Agreement or any of the**
23 **transactions contemplated hereby *shall be brought in the***
24 ***United States District Court for the District of Nevada* and**
that, in connection with any such action or proceeding, the
parties shall submit to the jurisdiction of, and venue in,
such court.

25 (*Id.* at 14 (emphasis added).)

26 15. The 2005 Underwriter Agreement, which repeatedly references the 2005
27 Broker-Dealer Agreement as well as Goldman Sachs' role as the broker-dealer of the
28 2005 Bonds, contains no agreement to arbitrate, and provides that Nevada law

1 governs its validity, interpretation and performance. (See Ex. 4 (2005 Underwriter
2 Agreement) at 3, 11, 16.) That agreement also does not provide that Goldman Sachs
3 would act as Reno's financial advisor in connection with the offering. In fact, Reno
4 had its own financial advisor to advise it in connection with the offering, Nevada
5 State Bank Public Finance.

6 16. The 2005 Underwriter Agreement and the 2005 Broker-Dealer
7 Agreement were negotiated simultaneously and executed contemporaneously as part
8 of the set of contracts that governed Reno's 2005 ARS issuance. Both agreements
9 were the result of arm's-length negotiations between Goldman Sachs and Reno, as
10 well as Reno's independent counsel.

11 17. The 2005 Broker-Dealer Agreement also contains a merger clause
12 providing that the "[2005] *Broker-Dealer Agreement, and the other agreements and*
13 *instruments executed and delivered in connection with the issuance of the ARS,*
14 *contain the entire agreement between the parties relating to the subject matter*
15 *hereof*, and there are *no other* representations, endorsements, promises, agreements
16 or understandings, oral, written or inferred, between the parties relating to the
17 subject matter hereof." (Ex. 2 (2005 Broker-Dealer Agreement) at 13) (emphasis
18 added).

19 The 2006 ARS Issuance

20 18. In 2006, Reno decided that it wanted to finance another public project
21 using long term debt, and it again chose to issue ARS. On April 17, 2006, Reno
22 issued approximately \$137 million of ARS (the "2006 Bonds"), for which Goldman
23 Sachs again served as sole underwriter and broker-dealer.

24 19. Like the 2005 Bonds, the 2006 Bonds were issued pursuant to an
25 underwriter agreement (the "2006 Underwriter Agreement and, together with the
26 2005 Underwriter Agreement, the Underwriter Agreements"), which sets forth
27 Goldman Sachs' limited duties as underwriter and does not state that Goldman
28 Sachs would provide any investment advice or brokerage services to Reno. (Ex. 5

(2006 Underwriter Agreement) at 1-2.) Once again, the City had its own financial advisor and legal counsel advising it regarding this agreement.

20. In the Broker-Dealer agreement for the 2006 Bonds (the “2006 Broker-Dealer Agreement”), the parties again explicitly agreed that any dispute would be brought in Nevada federal district court:

The parties agree that all actions and proceedings arising out of this Broker-Dealer Agreement or any of the transactions contemplated hereby shall be brought in the United States District Court for the District of Nevada and that, in connection with any such action or proceeding, the parties shall submit to the jurisdiction of, and venue in, such court.

(Ex. 3 (2006 Broker-Dealer Agreement) at 14 (emphasis added).)

21. The 2006 Underwriter Agreement, which repeatedly references the 2006 Broker-Dealer Agreement as well as Goldman Sachs’ role as the broker-dealer of the 2006 Bonds, contains no agreement to arbitrate, and provides that Nevada law governs its validity, interpretation and performance. (See Ex. 5 (2006 Underwriter Agreement) at 3, 11, 16.) Like the 2005 Agreements, it does not provide that Goldman Sachs would act as Reno’s financial advisor in connection with the offering. Reno also had its own financial advisor to advise it in connection with this offering, Nevada State Bank Public Finance.

22. The 2006 Underwriter Agreement and the 2006 Broker-Dealer Agreement were negotiated simultaneously and executed contemporaneously as part of the set of contracts that governed Reno’s 2006 ARS issuance. Both agreements were the result of arm’s-length negotiations between Goldman Sachs and Reno, as well as Reno’s independent counsel.

23. The 2006 Broker-Dealer Agreement also contains a merger clause providing that the “[2006] Broker-Dealer Agreement, and the other agreements and instruments executed and delivered in connection with the issuance of the ARS, contain the entire agreement between the parties relating to the subject matter hereof, and there are no other representations, endorsements, promises, agreements

1 or understandings, oral, written or inferred, between the parties relating to the
2 subject matter hereof.” (Ex. 3 (2006 Broker-Dealer Agreement) at 13.)

3 **The Interest Rate Swaps**

4 24. At or around the time of the issuance of the 2005 and 2006 Bonds, Reno
5 executed separate ISDA Master Agreements (the “Master Agreements”) with
6 Goldman Sachs Capital Markets, L.P. (“GSCM”), a Goldman Sachs affiliate that is
7 not named as a respondent in the FINRA Arbitration and is not a FINRA member.

8 25. Reno entered into two derivative swap transactions with GSCM under
9 the respective Master Agreements, pursuant to which Reno agreed to pay GSCM a
10 fixed rate of interest on its ARS debt in exchange for GSCM paying Reno a floating
11 rate (based on the LIBOR index) on the amount of that debt (the “Derivative
12 Transactions”). The Derivative Transactions were confirmed by two swap
13 confirmations, the first executed on October 11, 2005, and the second on April 12,
14 2006 (the “Swap Confirmations”), as well as several subsequent amendments to the
15 Swap Confirmations.

16 26. Neither the Master Agreements nor the Swap Confirmations provide
17 the parties with the right to arbitrate disputes arising out of the Derivative
18 Transactions.

19 **The FINRA Arbitration**

20 27. On February 10, 2012—more than four years after the first ARS
21 auctions began to fail, and long past the expiration of the two and three-year statutes
22 of limitation governing its claims—Reno filed a Statement of Claim with FINRA,
23 thereby instituting arbitration proceedings against Goldman Sachs. FINRA gave
24 notice to Goldman Sachs of the Statement of Claim on March 26, 2012.

25 28. In its Statement of Claim, Reno alleges that, in connection with its role
26 as underwriter and broker-dealer for the Reno ARS, “Goldman [Sachs] acted . . . with
27 superior knowledge of market risks and opportunities . . . [and] failed to disclose to
28

1 Reno material facts.”¹ (Ex. 1 (Statement of Claim) at 19.) It also alleges that
2 Goldman Sachs routinely placed “support bids” in order to “prop[] up the [ARS]
3 market,” and that, in February 2008, when Goldman “decided without warning to
4 stop supporting the ARS market[,] [t]he ARS market promptly collapsed, and the
5 rates on Reno’s ARS skyrocketed.” (*Id.* at 2.) Reno claims that, as a result of the
6 failure of its auctions it “paid much higher interest [rates] and sustained other
7 damages, such as costs of refinancing and swap termination fees.” (*Id.*)

8 29. The relief Reno seeks in the FINRA Arbitration consists of actual,
9 compensatory, punitive, and consequential damages; restitution and disgorgement of
10 all fees and costs associated with the ARS, including broker-dealer fees; and its fees
11 and costs associated with the FINRA Arbitration. (*Id.* at 23-24.)

12 30. Reno’s claims and theories are specious, particularly in light of its own
13 disclosures and information at its disposal concerning “support bids” and the
14 potential for failed auctions. However, Goldman Sachs and Reno never agreed to
15 arbitrate disputes arising out of Reno’s ARS. To the contrary, the Broker-Dealer
16 Agreements—which, along with “the other agreements and instruments executed
17 and delivered in connection with the issuance of the ARS, contain the *entire*
18 *agreement* between the parties” related to Reno’s ARS (Exs. 2 and 3 (2005 and 2006
19 Broker-Dealer Agreements) at 13 (emphasis added))—specifically provide that any
20 disputes arising out of Reno’s ARS shall be brought, if at all, in the United States
21 District Court for the District of Nevada, thereby plainly precluding arbitration.

22 31. Reno does not allege in its Statement of Claim that Reno: (i) opened or
23 maintained an account with Goldman Sachs; (ii) executed a customer agreement or
24 arbitration agreement with Goldman Sachs; (iii) suffered any losses in any Goldman

25
26 ¹ Reno brings claims for (i) breach of fiduciary duty, (ii) fraud, (iii) negligent
27 misrepresentation, (iv) violations of the Nevada Securities Act, (v) violation of the Section
28 10(b) of the Exchange Act, and (v) breach of MSRB/NASD duties. (Ex. 1 (Statement of
Claim) at 19-23.)

1 Sachs account; (iv) was an investor in any Goldman Sachs securities; or (v) received
2 investment or brokerage services from Goldman Sachs in connection with its ARS.

3 32. Goldman Sachs' answer to Reno's Statement of Claim is due on June 29,
4 2012, which it intends to file with FINRA solely in order to avoid the possibility of
5 defaulting in the FINRA Arbitration. Goldman Sachs' answer will expressly reserve
6 Goldman Sachs' right to object to the arbitrability of Reno's claims before FINRA.

7 **CAUSES OF ACTION**

8 **COUNT 1**

9 **(For a Declaratory Judgment)**

10 33. Goldman Sachs repeats and realleges paragraphs 1 through 32 as
11 though fully set forth herein.

12 34. The parties contractually agreed to bring any dispute related to Reno's
13 2005 and 2006 Bonds exclusively in this Court. Goldman Sachs' valid and binding
14 agreements with Reno supersede any right that Reno may have had to arbitrate
15 under the FINRA Code of Arbitration Procedure.

16 35. Moreover, even if Reno had not contractually agreed to litigate its
17 claims in front of this Court, there still would be no basis for bringing its claims
18 before FINRA. Pursuant to Rule 12200 of FINRA's Code of Arbitration Procedure for
19 Customer Disputes, which governs the arbitrability of disputes by a FINRA
20 arbitration panel, FINRA members like Goldman Sachs must submit to arbitration
21 only where each of the following conditions are met: (1) arbitration is either
22 (a) required by agreement or (b) requested by the "customer"; (2) the dispute is
23 between a "customer" and a member or associated person of a member; and (3) the
24 dispute arises in connection with the business activities of the member or the
25 associated person. These conditions are not met with respect to the dispute between
26 Goldman Sachs and Reno in connection with Reno's 2005 and 2006 issuance of ARS.

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1 36. Here, arbitration is not required by any agreement. On the contrary,
2 arbitration is precluded by the express terms of the Broker-Dealer Agreements.

3 37. Moreover, Reno is not a “customer” of Goldman Sachs as that term is
4 used in FINRA Rule 12200 and is also not a customer of an “associated person.”
5 Accordingly, this dispute is not arbitrable.

6 38. Goldman Sachs is compelled to seek relief in this Court because
7 arbitration is a creature of contract, and a FINRA arbitration panel has no authority
8 to decide whether the parties have submitted to it under the terms of their contract.
9 It is well-settled law that only a court can determine whether parties agreed to
10 arbitrate and, under the terms of the Goldman Sachs’ contracts with Reno, this Court
11 is the parties’ exclusive chosen forum.

12 39. As a matter of law, unless Reno is enjoined from pursuing its claims in
13 the FINRA Arbitration, Goldman Sachs will suffer irreparable harm because it will
14 (i) be deprived of its right to select the forum in which it expressly agreed to resolve
15 disputes, (ii) be forced to arbitrate a dispute it has not agreed to arbitrate, and (iii) be
16 forced to incur the substantial time and expense of defending itself in the arbitration
17 proceeding, or risk an adverse outcome in those proceedings, even though Goldman
18 Sachs is not legally compelled to arbitrate Reno’s stale claims. Being compelled to
19 arbitrate a dispute where the parties have not agreed to arbitrate constitutes
20 irreparable harm as a matter of law.

21 40. Declaratory relief from this Court will resolve this controversy.

22 41. As alleged herein, a real, substantial and immediate controversy is
23 presented regarding the rights, duties and liabilities of the parties. Goldman Sachs
24 therefore requests a declaratory judgment from this Court pursuant to 28 U.S.C.
25 § 2201 *et seq.* and Rule 57 of the Federal Rules of Civil Procedure that Reno’s claims
26 are not arbitrable and that Reno must bring its claims, if at all, in this Court.

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COUNT II

(For Injunctive Relief)

42. Goldman Sachs repeats and re-alleges paragraphs 1 through 41 as though fully set forth herein.

43. Reno has asserted claims for compensatory, consequential, and punitive damages against Goldman Sachs in the FINRA Arbitration and, on information and belief, unless enjoined, will continue to pursue such claims.

44. As a matter of law, unless Reno is enjoined from pursuing its claims in the FINRA Arbitration, Goldman Sachs will suffer irreparable harm because it will (i) be deprived of its right to select the forum in which it expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute it has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense of defending itself in the arbitration proceeding, or risk an adverse outcome in those proceedings, even though Goldman Sachs is not legally compelled to arbitrate Reno's stale claims. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

45. The balance of equities weighs heavily in favor of an injunction.

46. The public interest would be served by enjoining Reno from pursuing its time-barred and meritless claims against Goldman Sachs in the FINRA Arbitration because the parties' agreements preclude arbitration of this dispute.

PRAYER FOR RELIEF

WHEREFORE, Goldman Sachs respectfully requests that this Court enter an order:

1. Declaring that (a) FINRA is not an appropriate forum to resolve a dispute between Goldman Sachs and Reno pursuant to their contracts related to ARS; (b) Reno is not a customer of Goldman Sachs; and (c) FINRA has no jurisdiction to adjudicate the FINRA Arbitration;

///

2. Preliminarily and permanently enjoining Reno from pursuing any claims against Goldman Sachs in the FINRA Arbitration;

3. Awarding Goldman Sachs' costs of suit; and

4. Granting such other relief as may be just and proper.

Dated: June 18, 2012

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